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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 110/2016**

Date of Decision: 27.04.2016

KAUSHALYA DEVI & ORS Appellants

Through: Mr.S.R. Sharma, Advocate.

versus

SATYA DEVI Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR, J. (ORAL)

CM Appln.15077/2016

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RSA 110/2016

1. The appellants had filed Suit No.104/2011 seeking injunction against the defendants/respondents and their family members from dispossessing the appellants from the suit land measuring 1 bigha, 4 biswas (1080 sq.yards) situated in Khasra No.87/12 in Village Palam, Delhi.
2. The case of the appellants was predicated on the ground that they were the joint owners of the property and were in possession of the suit land. They had applied for demarcation before the revenue authorities and on their application demarcation was carried out on 26.05.2007 which had settled all disputes regarding boundary and possession of the land in question. It was only thereafter that a small room was constructed over the said land of which the appellants

claimed to be in continuous and uninterrupted possession. The cause of action for preferring the suit arose when the defendants claimed their share to the extent of 350 sq.yards and threatened to dispossess the appellant/plaintiff.

3. At the trial, only respondent/defendant No.1 contested whereas defendant No.2 was proceeded ex-parte.

4. The case of the respondent/defendant was that he was also a recorded bhumidar and, therefore, suit for permanent injunction simplicitor was not maintainable in the absence of any relief for possession. The suit was further contested on the ground that it was barred under Section 41(h) of the Specific Relief Act and the appellant/plaintiff could have approached the revenue authorities under the Delhi Land Reforms Act for delineation/declaration of their rights.

5. In order to support their case, the appellants relied upon Khatonis for the year 1977-1978 and 2002-2003 which were issued by the Revenue department to show that they are the joint owners of the suit property as well as the demarcation report dated 26.05.2007 to demonstrate that they were in possession of the suit property. Reliance also was placed on a police complaint dated 25.04.2009 to build up the case of the danger/threat of dispossession.

6. Conversely the respondent/defendant No.1 also relied upon the khatoni of the year 2002-2003 claiming the ownership of the suit property to the extent of 1/8th share (350 sq.yards).

7. During the pendency of the suit preferred by the appellants, an application under Order 39 Rules 1 & 2 was filed which was

dismissed for want of proof of prima facie case or balance of convenience in favour of the appellants for the Trial Court to have granted interim injunction. Arguments remained pending with respect to the maintainability of the suit.

8. The judgments of the Courts below reveal that the challenge to the dismissal of the application under Order 39 Rules 1 & 2 CPC also could not be sustained.

9. The Trial Court imposed costs as a condition precedent for adjournment of the case which was pending arguments on the issue of maintainability but neither costs were paid nor arguments were advanced. However, in order to put an end to the dispute, a preliminary issue as to whether the suit for injunction simplicitor was maintainable without seeking any declaration or partition, was framed on 2.2.2015 and the case was posted again for arguments. The Trial Court in the absence of any other material before it held that the suit property was a vacant plot (1080 sq.yards) out of Khasra No.87/12 in the revenue estate of Palam and, therefore, the prayer made in the suit for injunction simplicitor could not be granted. The Trial Court was also of the view that the Khatoni entries did not confer any title with respect to immovable property. Simultaneously, it was held that the Khatonis disclosed the defendant to be entitled to 1/8th share in the property.

10. The Local Commissioner's report, though, contained photographs showing jhuggis existing over the suit property but did not include any statement with respect to any construction over the suit land. The Trial Court, therefore, held that the appellant/plaintiff

could well have gone for suit for partition/declaration/possession.

11. The suit for permanent/prohibitory injunction, thus, was dismissed on the preliminary issue regarding its maintainability vide order dated 11.02.2015.

12. The appellant/plaintiff challenged the aforesaid order of the Trial Court on the ground that the demarcation report dated 26.05.2007 as well as the report of the Local Commissioner dated 20.04.2013 was completely ignored and in an arbitrary manner, preliminary issue was framed suo moto by the Trial Court. The further grievance of the appellant/plaintiff before the First Appellate Court was that one of the plaintiffs had appeared before the Trial Court and had sought adjournment for their counsel to make his submission but the Trial Court wrongly recorded in the order that no arguments were advanced regarding maintainability of the suit.

13. The First Appellate Court took note of the fact that only as a measure of last resort, cost was made the condition precedent for the appellant/plaintiff to address the Trial Court on the issue of maintainability and that neither cost was paid nor any arguments were advanced with respect to maintainability. Despite this, the suit was not dismissed and a preliminary issue referred to above was framed on 2.2.2015.

14. Since the preliminary issue framed on 2.2.2015 dealt with pure question of law, therefore, no evidence was required to be led over the aforesaid issue.

15. In *Ananthula Sudhakar v. P.Buchi Reddy (Dead) by LRs & Ors*, AIR 2008 SC 2033, the Supreme Court has conclusively laid

down as follows:-

“17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for

declaration of title, instead of deciding the issue in a suit for mere injunction.

(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”

16. The Appellate Court, therefore, rightly rejected the contentions of the appellants and affirmed the judgment and order of the Trial Court, whereby the suit was dismissed.

17. No interference with the aforesaid judgments of the Courts below is warranted.

18. The second appeal is consequently dismissed.

CM Appln.15076/2016

1. Since the RSA No.110/2016 is dismissed, this application has become infructuous.

2. Dismissed as having become infructuous.

ASHUTOSH KUMAR, J

APRIL 27, 2016/k